

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN LANELL WILSON,

Defendant and Appellant.

A153616

(Solano County
Super. Ct. No. FCR326220)

**ORDER MODIFYING OPINION
CHANGE IN JUDGMENT**

BY THE COURT:

On the court's own motion, the opinion filed in this case on March 15, 2019, is hereby ORDERED modified as follows:

On pages 2 and 3, the sentences under the DISPOSITION heading are deleted and the following sentences are added under that heading so that the DISPOSITION is changed to read as follows:

The judgment is reversed and the matter is remanded to the superior court for further proceedings. If the defendant moves to withdraw his guilty plea within 30 days of the issuance of the remittitur in this case, the superior court is directed to vacate the guilty plea and reinstate the information for further proceedings. Should the defendant not move to withdraw his plea within the 30-day period, the superior court is directed to reinstate the judgment.

This modification does change the judgment.

Dated: April 3, 2019

SIGGINS, P.J.
P. Siggins, Presiding Justice

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Defendant Juan Lanell Wilson appeals from a judgment following his no contest plea to the felony offense of failing to update his annual sex offender registration status (Pen. Code, § 290.012, subd. (a)¹) and suspension of sentence and imposition of a three-year probationary term. Before the change of plea proceeding, the trial court denied defendant's non-statutory motion to dismiss on the ground the People could not establish the elements of the charged offense. At the change of plea proceeding the court, while finding there was "a sufficient factual basis" to support the no contest plea, also informed defendant that the court would issue a certificate of probable cause thereby allowing him to appeal the denial of his non-statutory motion to dismiss. Following sentencing, the court issued a certificate of probable cause and defendant filed his notice of appeal.

We agree with the parties that, despite the trial court's comments at the change of plea proceeding, defendant's right to appeal the denial of his non-statutory motion to dismiss was not preserved by either the plea agreement or the issuance of a certificate of

¹ All further unspecified statutory references are to the Penal Code.

probable cause. “Under section 1237.5, a defendant may appeal from a conviction on a plea of guilty or no contest only on grounds going to the legality of the proceedings; such a plea precludes appellate consideration of issues related to guilt or innocence, including the sufficiency of the evidence to support the conviction.” (*People v. Palmer* (2013) 58 Cal.4th 110, 114; see *People v. Voit* (2011) 200 Cal.App.4th 1353, 1366 [“a plea of guilty or no contest forecloses an appellate challenge that the plea lacks a factual basis”].) “[A] certificate of probable cause does not make cognizable those issues which have been waived by a plea of guilty” or no contest. (*People v. LaJocies* (1981) 119 Cal.App.3d 947, 957.) Accordingly, defendant cannot pursue a substantive challenge to the denial of his non-statutory motion to dismiss because it goes to the sufficiency of the evidence to support the conviction, which issue was removed by the court’s finding of a factual basis for the no-contest plea. (see *People v. DeVaughn* (1977) 18 Cal.3d 889, 895, 896 (*DeVaughn*).)

Nonetheless, we also agree with the parties that defendant may seek to vacate his judgment of conviction on the ground he was improperly induced to enter his plea by the court’s statements purportedly preserving the right to appeal the denial of the non-statutory motion to dismiss. (*DeVaughn, supra*, 18 Cal.3d at p. 896.) “The court expressly stated one of the promises or representations made to [defendant] inducing his guilty plea was the court’s own promise to issue a certificate of probable cause ‘[i]n order to protect the defendant’s rights on appeal.’ The promise was illusory and therefore was an improper inducement which voids the plea.” (*People v. Bonwit* (1985) 173 Cal.App.3d 828, 833 (*Bonwit*), citing to *DeVaughn, supra*, at p. 896.) We concur with the parties that the matter should be remanded to allow defendant the opportunity to withdraw his plea and proceed to trial if he so desires. (*Id.* at p. 896; *Bonwit, supra*, at p. 833.) In light of our determination, we do not address defendant’s other contentions.

DISPOSITION

The judgment is reversed and the matter is remanded to the superior court for further proceedings. If defendant moves to withdraw his guilty plea within 30 days of the finality of our decision, the superior court is directed to vacate the guilty plea and

reinstate the information for further proceedings. Should defendant not move to withdraw his plea within the 30-day period, the superior court is directed to reinstate the judgment.

Petrou, J.

WE CONCUR:

Siggins, P.J.

Fujisaki, J.